# F. M. S.

[ORIGINAL CIVIL JURISDICTION]

THORNE, Ag. C.J. February 10, 1933.

*RE:* G. KRISHNASAMI

*EX PARTE:* KHOO IT GHEE

[SELANGOR BANKRUPTCY No. 254 of 1932]

*Bankruptcy—Practice—Cross-examination of Debtor.*

The rule with regard to the attendance of deponents for cross-examination on affidavits, and the consequence of the failure so to attend, is the same in bankruptcy as in ordinary civil proceedings.

When a debtor files an affidavit opposing the making of a receiving order, and fails to appear for cross-examination although notice to cross-examine has been given, the affidavit cannot be read in his absence.

*L. R. Chandran* for the Petitioning Creditor.

*G. K. Narayan* for the Debtor.

**THORNE, AG. C.J.**—This was a petition for a Receiving Order against G. Krishnasami, the act of bankruptcy alleged being failure to comply with the requirements of a bankruptcy notice.

The petition alleged that the debtor had resided for the greater part of six months next preceding the presentation of the petition at No. 9, Princes Road, Kuala Lumpur. The bankruptcy notice was served upon the debtor under an order for substituted service; the petition was served similarly (see the order of 1st December, 1932). The debtor gave notice that he intended to oppose the making of a Receiving Order as prayed for the reasons set out in his notice of the 23rd December, 1932. On the hearing of the petition before me, counsel for the debtor argued that the Court had no jurisdiction to make a Receiving Order for the reason that it was not shown that the debtor had resided in Kuala Lumpur for the greater part of six months prior to the presentation of the petition. Counsel relied upon the affidavit of the debtor of the 31st December, 1932, and the affidavits subsequently filed on his behalf. I regarded the statements made in this affidavit with some suspicion in view of the subsequent affidavits of Ooi Eng Siew of the 16th January, 1933, and the 8th February, 1933.

At a later stage in the argument, counsel for the petitioning creditor drew my attention to the fact that on the 5th January, 1933, he had served upon the solicitor for the debtor a notice requiring the debtor to attend the Court in order that he might be cross-examined on his affidavit of the 31st December, 1932.

The debtor failed to attend as required by that notice.

The rule with regard to the attendance of deponents for cross-examination on affidavits, and the consequence of the failure to so attend, is the same in bankruptcy as in ordinary civil proceedings—see *In re Bottomley, ex parte Brougham*, (1915) 84 L.J. K.B. 1020. This rule of practice ordains that if a deponent fails to attend and submit himself to cross-examination in response to such a notice his affidavit cannot be read.

The question was one of fact, namely, as to where the debtor had resided during the six months immediately preceding the presentation of the petition. I held that the affidavit of the debtor must be disregarded, although in fact it had been read before my attention was drawn to the service of the notice requiring him to attend for cross-examination. If this and other affidavits filed on the part of the debtor be disregarded, there is no evidence to show that the debtor was not residing in Kuala Lumpur as alleged by the petitioning creditor. That being so the only course for me was to make a Receiving Order and Order of Adjudication.

---

[APPELLATE CRIMINAL JURISDICTION]

TERRELL, Ag. C.J. March 9, 1933.

**BOOTA SINGH** ..... **Appellant.**

vs.

**PUBLIC PROSECUTOR** ..... **Respondent**

[PERAK CRIMINAL APPEAL No. 1 of 1933]

*Evidence Ordinance, Sections 8 and 32—Police Report—Admissibility.*

A report to the police made by the deceased against the accused several months before the murder of the deceased is not admissible under Section 32 of the Evidence Ordinance. It is admissible under Section 8, not as evidence of the truth of the allegations of the deceased against the prisoner, but as showing the relations between the parties and in support of the motive alleged by the prosecution.

*J. Dunford Wood* for the appellant.

*Raja Musa*, Deputy Public Prosecutor, for the respondent.

*Cur. Ad. Vult.*

**TERRELL, AG. C.J.**—In this case a report made by the deceased against the prisoner nine months before the murder was admitted in evidence by the trial Judge, as showing a motive for the crime. Counsel for the appellant argued:—

(*a*) that the report was inadmissible under any Section of the Evidence Ordinance, and

(*b*) that if it was wrongly admitted, it must have influenced the whole course of the trial, and that the accused was entitled to an acquittal.